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SUNDAY LEGISLATION.

It has now been more than fifteen hundred years since the promulgation of the celebrated edict of Constantine, which is said to have been the first interference on the part of the civil authority in the matter of Sunday observance. From that time to this the law-making power of united Christendom has, with varying earnestness and success, often striven to impart to the weekly festival commemorative of the great central claim of the christian faith something of that extraordinary sanctity acquired by the ancient Sabbath of Judaism, during centuries of rabbinical casuistry and pharisaical fetich worship of the letter of the law. Much of this legislation, like legislation in general, forms a curious compound of philanthropic impulse and fatuous ignorance. Its assumptions, indeed, have oftentimes been wholly unwarrantable from the view-point both of catholic tradition and of generally credited opinions regarding the limitations of government. Some of its more disastrous results might have been foreseen. Doubtless they were foreseen and all the more dreaded by the patristic leaders who cried out loudly against the sabbatizing of Sunday. For the cause of religion has often been implicated with those restrictions, which many have viewed as an indefensible intrusion into the sphere of private judgment, and at the same time men have questioned a plain right of the State which might otherwise never have been so much as even challenged.

The evolution of the idea of a day of rest is a subject of more than ordinary interest, and has excited the comments of many writers, both ancient and modern. Of especially peculiar significance is that historic and almost universal septenary division of time that in all ages of the world has been venerated as an institution of superhuman origin. This idea appears to have found its highest expression among the Jews, while the claim of the binding force

of the Hebrew Sabbath on any people other than the Jews has long been debated with more or less warmth, although it is difficult to find in history a substantial basis for such a claim. Indeed, both the Sabbath and Sunday were for a long time observed in the primitive Church, and this was particularly true as long as the element of Judaism was strong in the christian ecclesiastical body. That the distinction between the two days was recognized, however, appears to be a fact beyond dispute. But with the advent of Constantine a new force began to be felt throughout the Church; to the hand of the priest was added the arm of the magistrate. Constantine's edict is so interesting as a matter of history that it may not be out of place to give what is said to be its English equivalent:

"Let all the magistrates", says this old Sunday law, "and the functions of all who are engaged in the arts cease on the venerable day of the Sun. Nevertheless, those dwelling in the country may freely and lawfully attend to the claims of agriculture, since it often happens that another day will not be so fit for sowing grain or planting vines, that the blessings granted us by heaven's bounty may not be lost by neglecting the proper moment of securing them."

Not one word against either amusement or recreation, for the evident purpose of the edict was to provide for a cessation from toil; in other words, to ordain a holiday. Curiously enough, however, just as the progress of time witnessed a complete transformation in the character of the original Jewish Sabbath, so did the successors of Constantine widely depart from the precedent set by that emperor. Men began more and more to look at the letter of the law rather than at the spirit that came to destroy it, and so a day made joyous by the glad tidings proclaimed to the world clothed itself in the sombre robes of the Levites. It will not do to ascribe this great alteration in the idea of Sunday to the Puritans. That sect may, to be sure, be largely responsible for the present austerity of the English and American Sunday, but historians appear to agree that the

Puritans found in the legislation of mediæval Europe abundant authority for the ground they took in this matter. For following in the footsteps of Constantine many European States passed more or less stringent statutes on the subject of Sunday observance, some of which were doubtless passed simply to demonstrate the pretensions of absolutism. In the end, however, the more liberal view of Sunday won its way on the Continent where the day is, with the possible exception of Sweden, pretty generally regarded as a day of rest and recreation which people spend as they do any other holiday. Work appears to be in the main suspended by law on that day. Sometimes the shops are closed only during the hours of church service, and here and there distinctions may be noted between the morning and afternoon. There, however, the law usually stops. As to whether a man shall go to church or not; to a concert or not; to the opera or not; to a beer garden or not; or hunting or not—these and like matters, whatever be the theory, are certainly in practice left almost entirely to the judgment of each individual, and so long as he does not interfere with the rights of others, he is neither let nor hindered in the due exercise of that judgment.

When, however, we pass to a consideration of English legislation on the subject of Sunday observance, we encounter an entirely novel set of prejudices and theories, the like of which can scarcely be paralleled anywhere else in the world, ancient or modern, save possibly in those countries which have inherited their institutions from England. In some respects these laws surpass in strictness even those of the Jews.

As elsewhere, English Sunday legislation is of early origin, reaching as far back as the reign of Ina. For the most part these ancient statutes, like those for instance passed in the time of Athelstan, were directed against Sunday traffic, while late in the reign of Henry VI. an act of Parliament prohibited the holding of fairs and markets on the principal festivals, Good Friday, or any Sunday, ex-

cept on the fourth Sunday in harvest. It is claimed, however, and with very good reason, that in spite of much Sunday legislation on the part of Parliament, including statutes enjoining attendance upon church service on the Lord's Day, the civil power did not endeavor to interfere in the matter of Sunday recreation until the year 1618, when the famous "Book of Sports" of James I. was promulgated. This book granted royal authority to all save recusants to indulge on a Sunday in such pastimes as dancing, leaping, May games, archery, and similar amusements. But bear-baiting and other brutal sports were expressly prohibited. Following the example of his father, Charles I. prohibited, by statute, all persons from seeking amusements on Sunday beyond the limits of their respective parishes, but allowed them to play in their own yards on that day.

Such appears to have been the legal status of the English Sunday when the Puritans took hold of the subject. It is said that this sect found their principles of legislation and jurisprudence in the books of Scripture accredited to Moses. It is certainly true that under the strong influence of the theocratic conceptions of Judaism a complete recrudescence of the Sabbath was effected. But the way had in a measure been already prepared for such legislation. It was, for instance, no long stride from a Sunday of prohibited labor, enjoined worship, and compulsory abstinence from certain kinds of recreation to a Sabbath of complete cessation from every sort of employment and amusement that left in the mouth any taste of this world. To men of the strictest views of life, to whom all gayety and pleasure approached dangerously near the point where their conceptions of wickedness began, and whose entire religious creed was singularly gloomy and severe, the code of Judaism appealed as strongly as that of Justinian did to the imperial ideas of the mediæval canonists. Where, therefore, was it more natural to seek the true ideal of Sunday than in the teachings of that sect who, as Macaulay puts it, "proud of their washed hands and broad phylacteries,

taunted the Redeemer as a Sabbath-breaker and a wine-bibber?" It required, then, merely the legislation of these men, good and useful in many other respects as they may have been, to complete the substitution of the Jewish conception of the Sabbath for the traditional conception of the christian Sunday. The triumph was complete; but it has been declared that it was gained in spite of the reiterated declarations of Luther and Calvin. So effectually, however, did the Puritans do their work, that until this day their way of looking at Sunday has remained rooted in the minds of the English and Americans. For not even was the extravagant reaction under Charles II. sufficient to bring back the old-time spirit which had been extinguished with such zeal; and even to-day one sees on all sides in England the traces of Puritan influence. On Sundays, after church service, the people usually sit about their houses or clubs, talking or smoking. Almost everybody goes to church as a matter of course. As a rule, however, one will find most places of amusement and recreation closed on Sunday, although of late there is a very noticeable tendency to open such institutions as libraries and art galleries, while Sunday concerts are not nearly so rare nowadays as formerly. Reference might also be made to an old custom of London which permits the opening of the public houses for two hours on Sunday after the conclusion of church service.

The American Sunday is the English Sunday in a perhaps exaggerated form. Several influences are now at work, however, which are affecting seriously the traditional conceptions of the day. Not the least powerful agency in this change is the reorganization of modern industries and the far-reaching necessities it has given rise to. So interdependent have modern communities become that it is well-nigh impossible to dispense entirely with Sunday trains, Sunday newspapers, Sunday telegraphic dispatches, and Sunday telephones. Nor has the influence of foreign immigration been slight. As Bishop Potter pointed out in his famous argument in favor of opening the World's Fair at Chicago

on Sunday, this influence is especially strong in our larger towns. A third influence in the de-sabbatizing of Sunday, is the change of public sentiment generally in regard to the day — a sentiment whose origin it is difficult to trace, but perhaps largely growing out of each of the above causes, to which might be added the influence of the ever-increasing annual exodus to Europe. The American who spends some time in Europe usually brings back with him impressions gained abroad, and these often tell against a rigid observance of Sunday.

As everybody knows, most of the colonies had very strict Sunday laws upon their statute books. Owing to the celebrated "Blue Laws" forgeries of the Reverend Samuel Peters, Connecticut Sunday legislation has acquired a particularly unenviable reputation; but Sunday legislation was confined to no section of the country, although its rigor doubtless varied with the religious temperament and convictions of the colonists.

Reference has already been made to the decline of the American Sunday; but it is worthy of remark that in the rural portions of the United States the old ways are still adhered to. Sunday there is often about as disagreeable and tedious a day as one could desire. In communities like New Orleans, San Francisco, Cincinnati, and Milwaukee, however, where foreign influence — notably that of the French and Germans — is perhaps most strongly felt, the continental ideas largely prevail. On the whole, however, the attitude assumed by Congress in the matter of closing the World's Fair on Sunday may be said to have fairly reflected the sentiment of the American people. Mr. Bryce, for example, has pointed out the fact that most if not all the States have laws upon their statute books which prohibit all kinds of work on Sunday save such as necessity and charity require. Various kinds of amusement and recreation, moreover, are not infrequently prohibited. Here, for example, are the sections of the code of Tennessee bearing on this subject:

SECTION 2,289. If any merchant, artificer, tradesman, farmer, or other person, shall be guilty of exercising any of the common avocations of life, or causing or permitting the same to be done by his children, or servants, acts of real necessity or charity excepted, on Sunday, he shall, on due conviction thereof, before any justice of the peace of the county, forfeit and pay three dollars, one-half to the person who will sue for the same, and the other half for the use of the county.

SECTION 2,290. Any person who shall hunt, fish, or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties as those who work on the Sabbath.

It is true a large part of American Sunday legislation remains practically a dead letter; but unless repealed the statutes are still operative. And here and there the enforcement of even the more humane provisions of the law very nearly approaches a hardship, as witness the case of the sect known as the Seventh Day Baptists, several of whose members were recently imprisoned in Tennessee, after having refused to pay the fine imposed upon them for working on Sunday. A glaring inconsistency in the enforcement of such a law is furnished by the failure to convict a band of ruffians in the same State who had lynched a party of innocent and helpless negroes accused of violating the property rights of some farmers. In the matter of Sunday observance, moreover, public opinion not infrequently enforces a statute which the officers of the law would perhaps rather ignore. In many parts of the United States, for example, it is considered "bad form" to go riding or driving on Sunday, and a Sunday row or sail, particularly if followed by some distressing casualty, often furnishes the occasion for more or less uncharitable sermons on the evils of "Sabbath-breaking."

The more one examines the ground on which American Sunday legislation is based the more irresistible becomes the conclusion that it is a physical and moral rather than a religious ground. Indeed, with our theories of government such statutes could have no other basis. The laws, therefore, simply create a holiday, and their constitutionality has been upheld by the highest court in the land. This is

plain enough. While, therefore, we may justify a statute which affords the toiler in shop and mill an opportunity for physical and moral expansion by protecting him alike from his own selfishness and that of his employer, it is impossible to view with approval those laws which practically prevent a man from fully enjoying his day of rest. The question of Sunday legislation seems, therefore, to resolve itself into the broader one of the proper mode of observing the day. This is a question each individual should be allowed to answer for himself. Our government has nothing to do with the subject of religion as religion. Nor, as has been well said, is Christianity a part of the law of the land in the sense that its teachings as such will be enforced by our courts. That would, of course, be no less impossible than undesirable. Religion appeals to the inner life of man; in other words, to his conscience; and it would, according to our theories of government, be both idle and unconstitutional to legislate in such a matter. And even where the State can interfere, the ground is a very delicate one, for it is quite possible for the majority to tyrannize over the minority. Nor is it possible to lay down any general rule for guidance in the matter. Each community should enjoy the right to decide the question for itself, with a due regard to the conflicting views of its several members. Of course, where a law exists, it ought to be enforced, as Mr. Roosevelt is doing it in New York, and if the statute is obnoxious, the remedy is with the public. But indications are not wanting which point to a freer Sunday. We have outgrown the idea that people can be made good by legislation; and if the forces to which are committed, for the most part, the care of regenerating man's spiritual nature are unable to carry on the struggle without the intervention of the secular arm, they are in a bad way: no human law can help them. For the law-making power that invades the domain of conscience is blind to the teachings of history and is sowing the seeds of that contempt for the law which ripens into anarchy.

B. J. RAMAGE.